

**BEFORE THE MONTGOMERY COUNTY
BOARD OF APPEALS
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
Rockville, Maryland 20850
(240) 777-6660**

IN THE MATTER OF:
T-MOBILE NORTHEAST, LLC
and
TRAVILLAH-WHM LIMITED¹
PARTNERSHIP
Petitioners

Michael Bortz
Curtis Jews
For the Petition

Sean Hughes, Esquire
Attorney for Petitioner T-Mobile

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* Board of Appeals Case No. S-2803
* (OZAH No. 11-27)
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Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER’S REPORT AND RECOMMENDATION

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¹ Travillah-WHM, Limited Partnership, spells its name with a double-L, even though the Road is spelled “Travilah.”

I. STATEMENT OF THE CASE

Petition No. S-2803 was filed on February 1, 2011, by T-Mobile Northeast LLC and Travillah-WHM Limited Partnership. Petitioners seek a special exception, pursuant to §59-G-2.58 of the Zoning Ordinance, to construct an unmanned wireless telecommunications facility on an 80-foot tall monopole with flush-mounted antennas, and an associated equipment area, at 14119 Travilah Road, Potomac, Maryland. The site is on land owned by co-applicant Travillah-WHM Limited Partnership, and it is in the C-1 Zone, which permits telecommunications facilities by special exception.

Filed with the application was the February 3, 2010 recommendation of the Montgomery County Transmission Facility Coordinating Group (TFCG), also known as the “Tower Committee,” recommending approval of the facility, conditioned upon the applicant obtaining a special exception from the Board of Appeals.² Exhibit 7.

On February 7, 2011, the Board of Appeals issued a notice that a hearing in this matter would be held before the Office of Zoning and Administrative Hearings on May 13, 2011. Exhibit 13. Technical Staff at the Maryland-National Capital Park and Planning Commission, in a revised report issued May 5, 2011, recommended approval of the special exception, with conditions (Exhibit 22(a)).³

A public hearing was convened as scheduled on May 13, 2011, and Petitioners called two witnesses. There were no other participants at the hearing, which concluded on the same day. Since the plans were amended at the hearing (Exhibits 29(a) – (f)), the record had to be held open until May 31, 2011, to allow 15 days for public comment pursuant to Board rules. Petitioner agreed that

² Under Zoning Ordinance §59-G-2.58(a)(11), the Tower Committee’s recommendation “must be no more than 90 days old, except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance.” The Tower Committee’s recommendation was timely filed within one year, as required in this case; however, Petitioners’ witness, Michael Bortz, mistakenly testified it had been filed within 90 days. Tr. 50.

³ The Technical Staff report is frequently quoted and paraphrased herein.

the FCC “shot-clock”⁴ would not run during that period of time. Tr. 58-61.

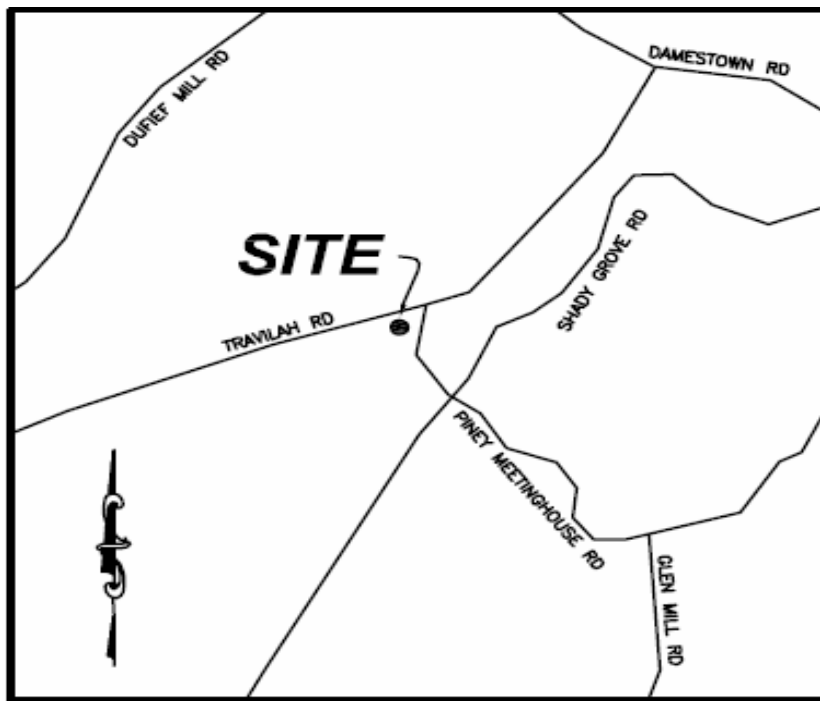
On May 19, 2011, Technical Staff sent an e-mail approving the revised plans (Exhibit 44), and the record closed, as scheduled, on May 31, 2011.

As will appear more fully below, Petitioners have met all the requirements for the special exception they seek, and the Hearing Examiner recommends that it be granted, with conditions specified in Part V of this report.

II. FACTUAL BACKGROUND

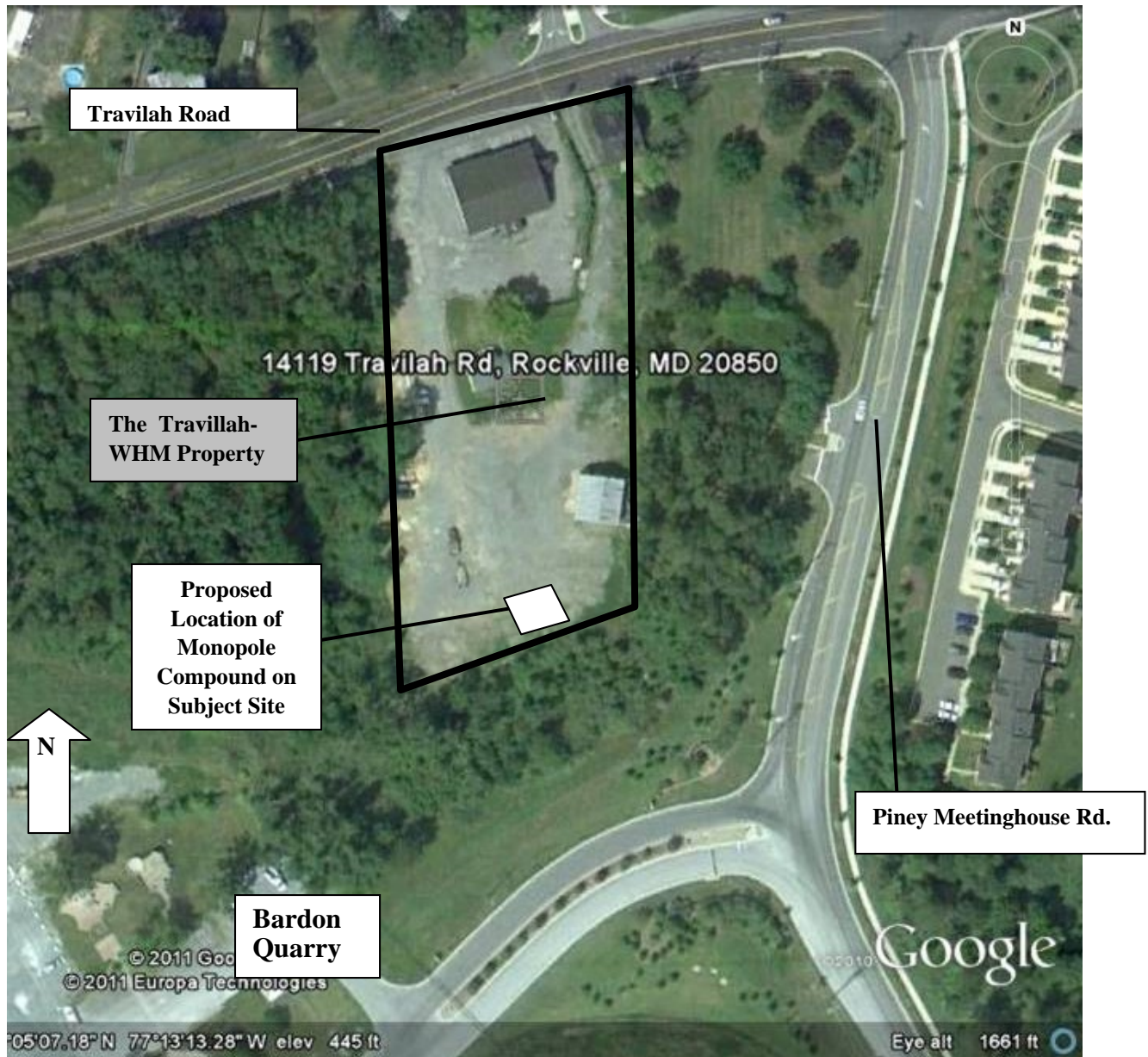
A. The Subject Property and the General Neighborhood

As noted above, the address of the subject property is 14119 Travilah Road, Potomac, Maryland. Technical Staff describes the Travilah-WHM property, which is identified as Parcel P160, as a rectangular shaped lot that consists of approximately 1.99 acres of land located in the C-1 Zone. Exhibit 22(a), p. 1. The location of the site is shown below, in a vicinity map from Exhibit 29(a):



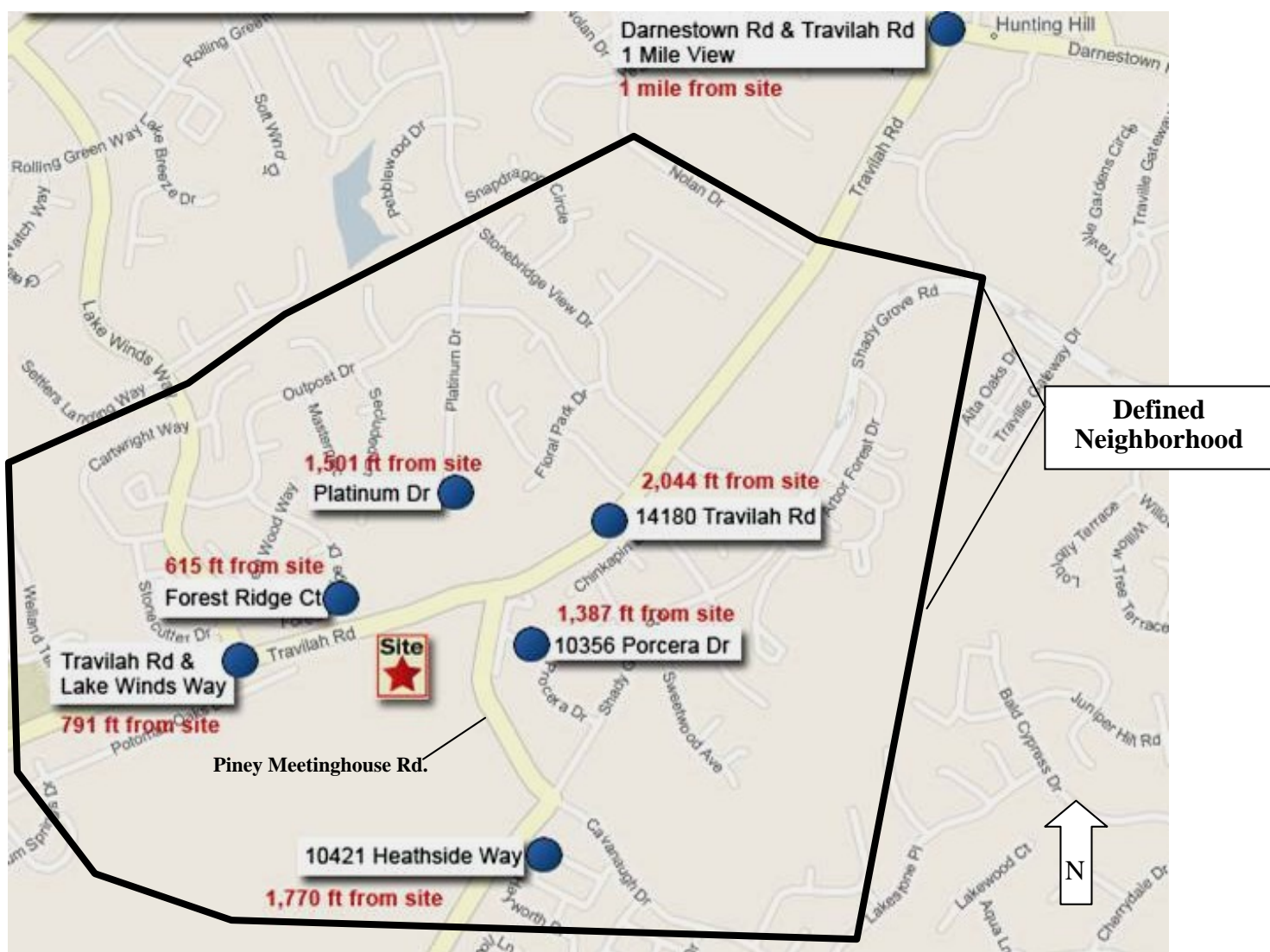
⁴ The “shot-clock” is a ruling of the Federal Communications Commission (FCC) creating a presumption that 150 days is a reasonable time period for a local community to process an application for permission to erect a cell tower.

As stated by Technical Staff, “[t]he property contains four structures, a one-story retail structure currently occupied by dry-cleaners, two residential style frame buildings, and a storage facility.” Exhibit 22(a), p. 1. Access to the site is off of Travilah Road through a paved driveway. This parcel is all paved, and a driveway leads back to the proposed facility, which will be located at the extreme southern end of the parcel. Tr. 13. There is a 98 acre quarry to the south-southwest. Between the quarry parcel and the subject site, there are heavily wooded mature trees, screening the site from the south, west and east. Tr. 18. These features can be seen in the following aerial photo (Exhibit 32):



Technical Staff reports that there are no existing streams, wetlands or their associated environmental buffers on the site, and that a simplified Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) was approved by Environmental Planning staff on September 9, 2010. Exhibit 22(a), p. 5. A forest conservation plan exemption (42011006E) was confirmed for this site by Environmental Planning staff on September 9, 2010 under §22A-5(t) of the County Forest Conservation Law. Exhibit 6. Staff also notes that the application is for a modification to an existing developed property and will not require approval of a new subdivision plan. Exhibit 22(a), p. 5.

The Hearing Examiner has depicted the outline of his recommended neighborhood definition on Petitioner's vicinity map (Exhibit 11(a)), shown below:



Technical Staff had recommended defining the general neighborhood identically to the definition of the surrounding area accepted by the District Council for purposes of the rezonings in LMA G-653 and G-868. That area is bounded on the north by Route 28, on the east by Glen Mill Road, and on the south and west by the Pepco right-of-way, as shown in a map on page 2 of the Staff report. Exhibit 22(a). The Hearing Examiner finds that area to be much too large for the definition of the general neighborhood in this case, which should be the area most likely to suffer adverse effects from the proposed special exception. The proposed 80-foot tall wooden monopole should have no adverse effects except for visibility, and that will not extend very far considering the moderate nature of its planned height. Therefore, the Hearing Examiner has used Petitioner's vicinity map (Exhibit 11(a)), shown above, to depict his recommended neighborhood boundaries. Generally, the neighborhood is bounded on the north by Settlers Landing Way and Nolan Drive; on the east by Alta Oaks Drive and Lakestone Place; on the south by Hayworth Drive; and on the west by Welland Terrace. At the northern and southern ends of the defined neighborhood, the pole will not be visible, based on photo simulations which will be discussed below.

The quarry to the south of the property is about 90 acres in size and is zoned heavy industrial (I-2). The I-2 Zone is also adjacent to the subject site along the southern third of the western property line. The other adjacent properties to the west, north, and east are residential and zoned R-200/TDR. Staff reports that a landscape contracting business and retail nursery special exception at 14100 Travilah Road was approved in 1994, and is located to the northwest of the subject property. A private educational facility for students (pre-kindergarten through second grade) special exception at 14138 Travilah Road was approved in 2002, and is located to the northeast of the subject property. Exhibit 22(a), p. 2.

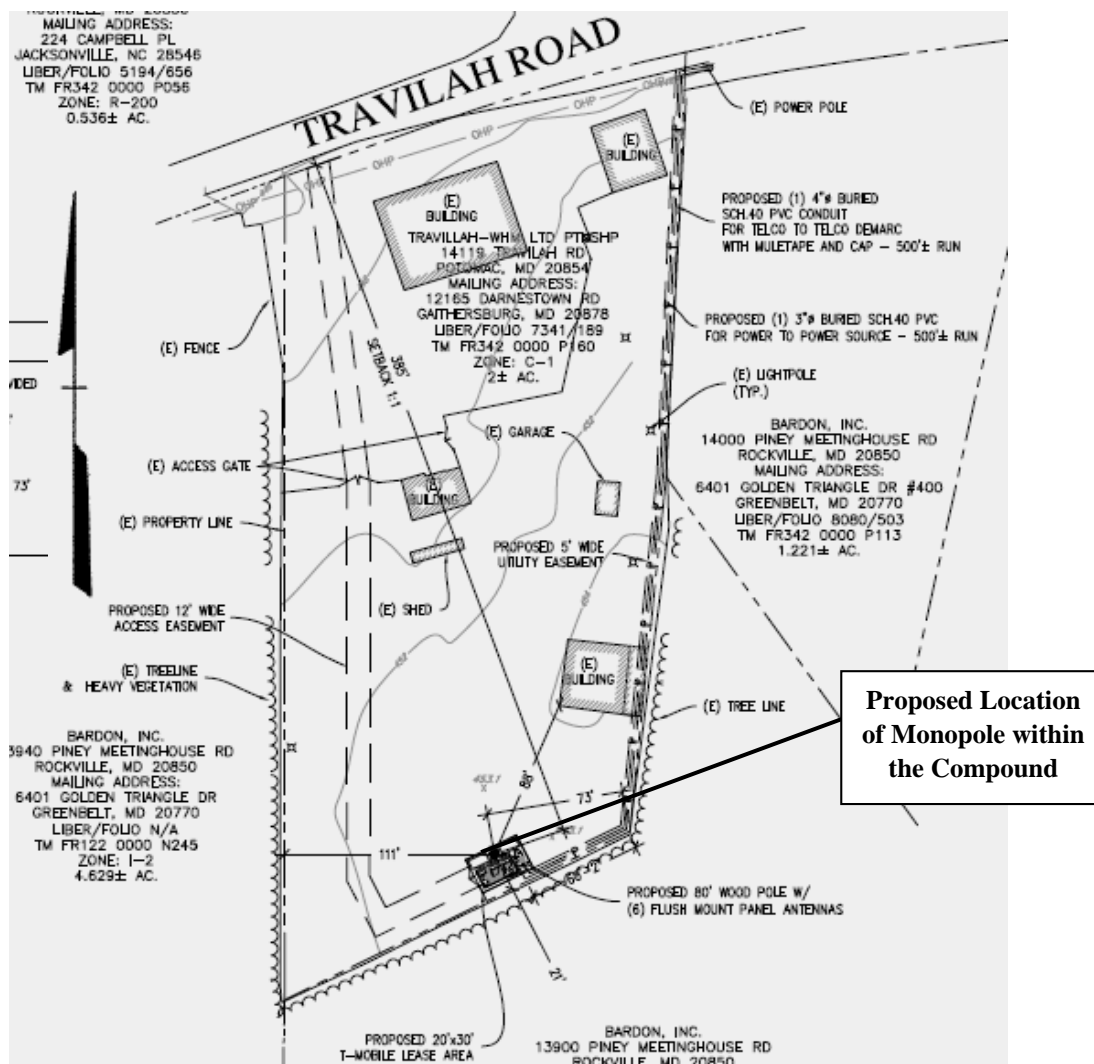
The closest residences are townhouses located 370 feet east of the proposed tower, across Piney Meetinghouse Road

B. The Proposed Use

The subject application seeks a special exception to permit:

1. An 80-foot tall wood telecommunication monopole, with flush mounted panel antennas.
2. A screened 30-foot by 20-foot equipment compound (*i.e.*, 6,000 square feet).
3. Three (3) equipment cabinets placed on a concrete pad within the proposed compound.
The equipment cabinets measure approximately 63 inches high, 51 inches wide, and 37 inches deep and will sit atop the equipment pad measuring approximately 20 feet in length and 10 feet in width. Coaxial cables to be connected to the cabinets and to the antennas.
4. The equipment cabinets will be secured by a 7-foot chain link fence, with privacy slats rendering the fence opaque.
5. Hours of operation: 24 hours a day, seven days a week
6. Facility to be unmanned, with visits to the site only for emergency repairs or regular, scheduled maintenance once per month.

The following Overall Site Plan (Exhibit 29(c)) shows details of the site and the location of the proposed equipment compound and cell tower:



All required setbacks would be met except for the southern setback, which should be at least 40 feet from an industrial zone (*i.e.*, half the height of the tower), but will be only 21 feet. Thus, Petitioner seeks a reduction of 19 feet from the required 40-foot setback from the southern property line, as the Board is authorized to do pursuant to Zoning Ordinance §59-G-2.58(a)(1)(D), in order to locate the support structure in a position that will be less visible from Travilah Road and residences to the north.

The Enlarged Site Plan (Exhibit 29(d)) shows the location of equipment in the compound:

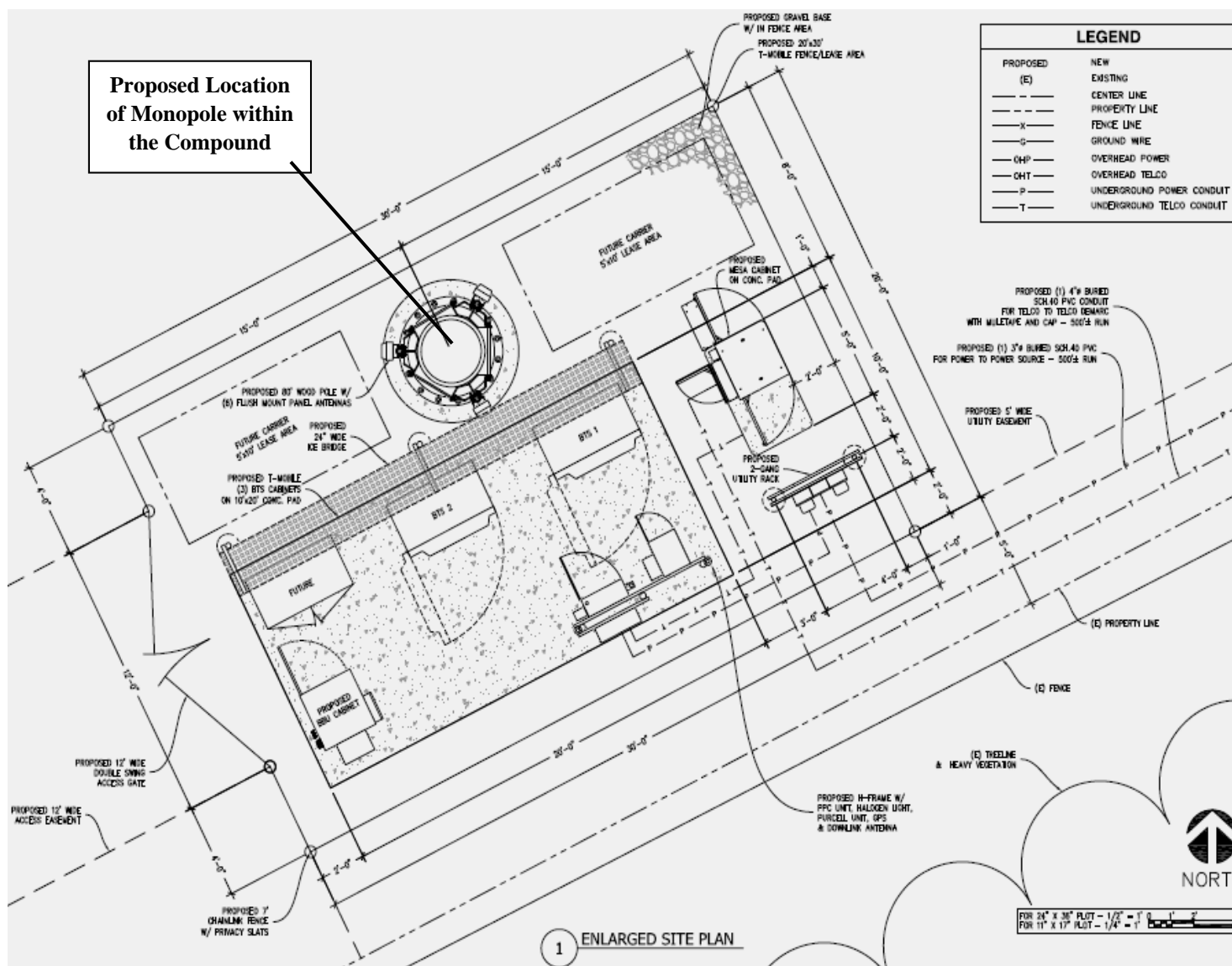
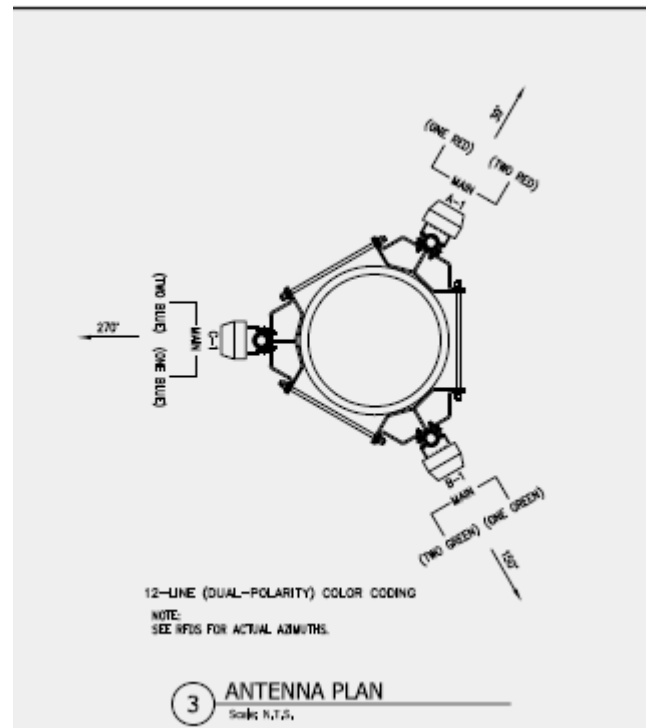
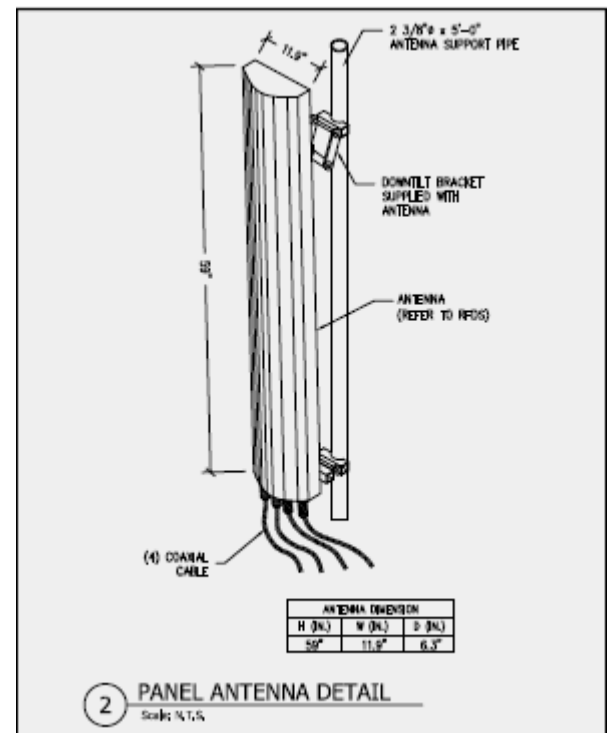
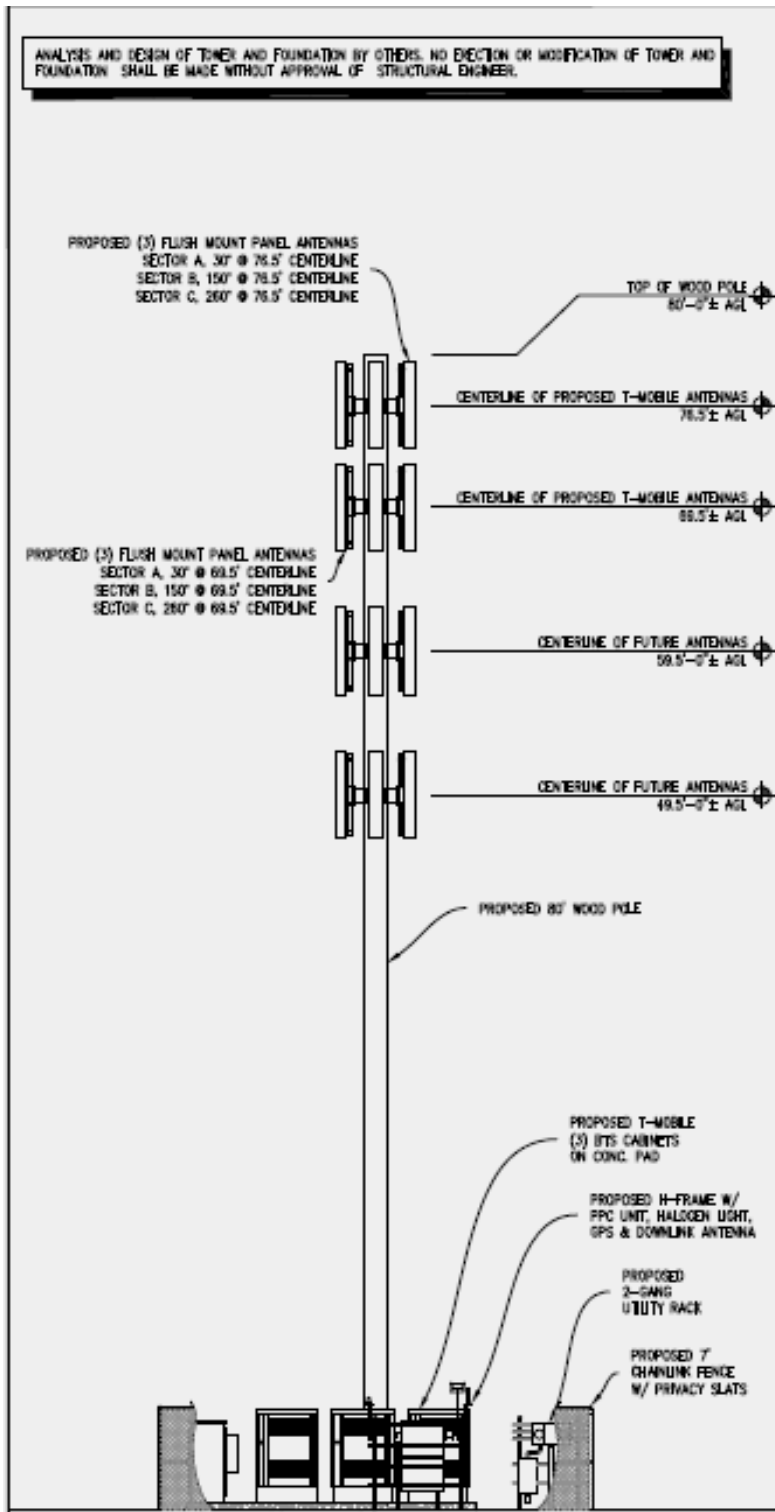
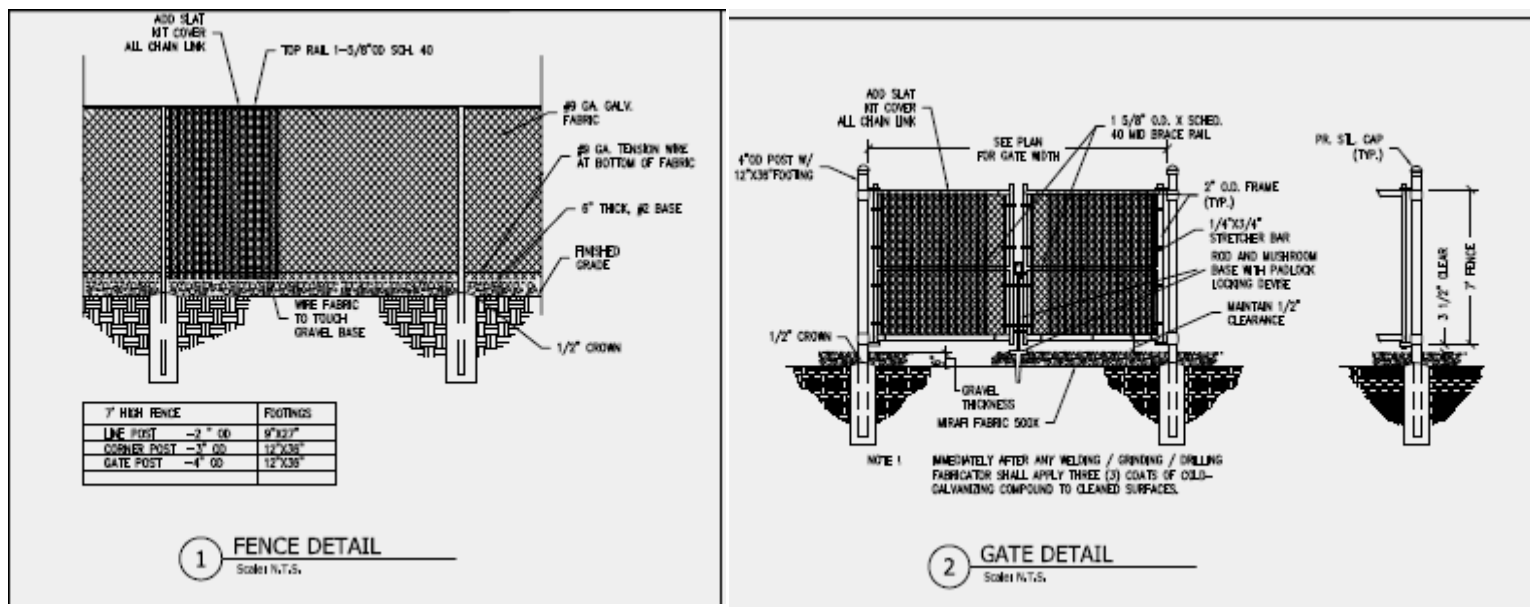


Exhibit 29(e) shows details of the proposed Cell Tower and its antennae:



Details of the proposed seven-foot fence that will surround the compound are depicted in Exhibit 29(f):



The proposed facility will be constructed with sufficient capacity to hold the antennas of at least two other communication carriers (co-locators) in addition to the antennas of T-Mobile. Tr. 14. There will be no lighting at all on the facility except an emergency lamp attached to one of the equipment cabinets for a technician to service it in the dark. Tr. 39-40.

The proposed monopole will not be lighted and will contain no signage except a sign no larger than 2 square feet affixed to the support structure or equipment shelter to identify the owner and maintenance service provider, as required by Zoning Ordinance §59-G-2.58(a)(8). In addition to the fence, the equipment compound will be screened to the west, south and east by tall, thick mature trees already in the area, and will be set back 385 feet from Travilah Road.

Cell towers are not typically made of wood, but Petitioners felt that a relatively short wooden tower would blend in better in the area. Tr. 45-47. Petitioners supplied a photograph of a wooden cell tower similar to what is proposed in this case (Exhibit 37), and it is reproduced on the next page.



The proposed cell tower will be in a commercial zone. §59-G-2.58(a)(1)(B) requires, in commercial and industrial zones, that the cell tower be set back

a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

The property line setbacks in this case are 385 feet to the north (a residential zone), 21 feet to the south (an industrial zone), 73 to the east (a commercial zone), and 111 to the west (an industrial zone in the southern third of the property line and a residential zone in the northern portion). It thus meets all of the setback requirements, except to the south, where the setback should be 40 feet (half the

height of the tower).

Applicants are seeking a 19 foot reduction of the setback requirements on the south, pursuant to Section 59-G-2.58(a)(1)(D), to allow the cell tower to be erected 21 feet from the southern property line, instead of the required 40 feet. As explained by Applicants, the cell tower was not sited to meet the southern setback requirements to get it closer to the industrial quarry and further away from Travilah Road and any view from the surrounding northern residential houses. It will also be well screened by trees in the planned location. Tr. 25-26.

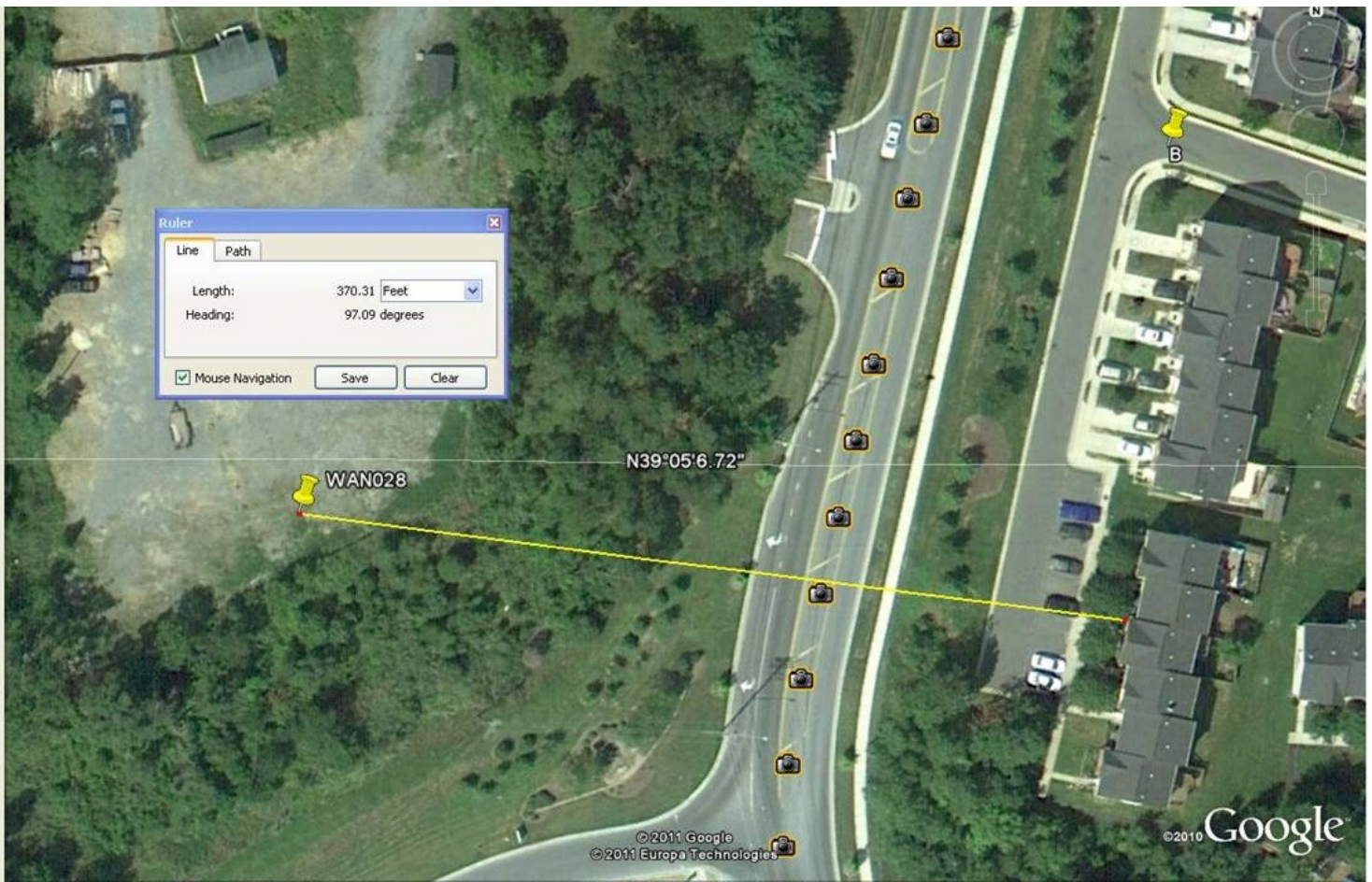
The Board of Appeals is authorized by Zoning Ordinance §59- G-2.58(a)(1)(D) to reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction; and “evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.” The rear setback for a building in the C-1 Zone is determined by Zoning Ordinance §59-C-4.343, which requires in the circumstances of this case, that “the setback must be not less than that required in the adjoining zone.” The adjoining zone to the south is the I-2 Zone. It does not require a setback, pursuant to § 59-C-5.33(b)(2), because the adjoining subject site is in a commercial zone. Thus, the Board is authorized to grant the waiver sought by Applicants.

Technical Staff agreed with the waiver request (Exhibit 22(a), p. 13):

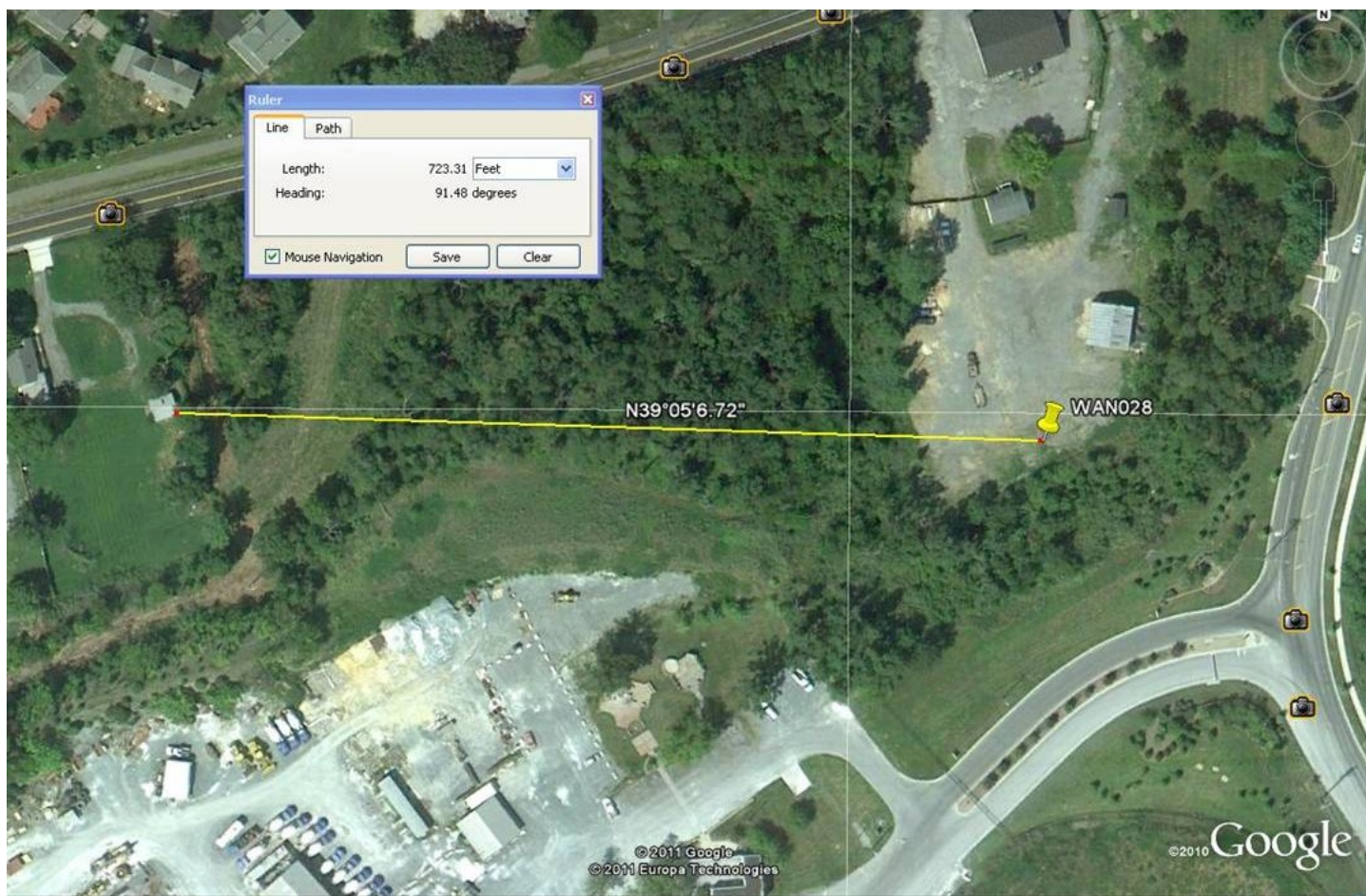
The proposed location takes advantage of the quarry location to the south. The nearest residences are on the north side of Travilah Road and the proposed location is the most remote feasible. The visual impact to is minimal and will ultimately be further reduced by redevelopment of the commercial property. Staff supports the setback reduction request.

The Hearing Examiner also agrees with this sensible observation, and there is no evidence to the contrary in the record.

In addition to the required setbacks from the property lines, Zoning Ordinance §59-G-2.58(a)(2)(B) requires, in zones other than a residential or agricultural zone, that the cell tower be set back from any off-site dwelling one foot for every foot in the height of the tower (*i.e.*, 80 feet in this case). This tower will be set back 347 feet from the nearest residence, thus meeting even the 300 foot setback required by §59-G-2.58(a)(2)(A) for residential or agricultural zones. These setbacks from nearby residences are demonstrated by two Google aerial photographs introduced by Petitioners. The first, Exhibit 33, shows that the distance to the nearest residence (townhouses across Piney Meetinghouse Road) is 370 feet to the east:



The second, Exhibit 34, shows that the nearest residence to the west is 723 feet away.



Since the closest residences to the north are across Travilah Road, which is itself 385 feet away from the proposed tower location, and there are no residences in the industrially zoned, 93 acre quarry to the south, it is clear that the application meets this setback requirement.

The equipment cabinets house the electronics for the structure and backup batteries, described in detail in Exhibits 40(a) and (b). T-Mobile plans to use a NorthStar battery. The EPA classifies NorthStar NSB 100-FT battery as spill proof. Exhibit 40(a) indicates that T-Mobile operates a network of over 1,500 radio base stations in the D.C. Metro area. Since 1999, when the network was first launched, T-Mobile has operated and maintained this equipment without a single failure or

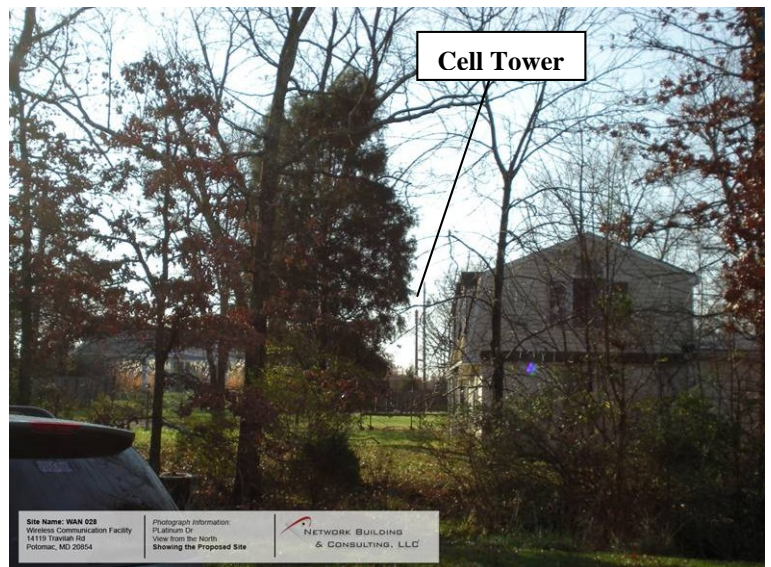
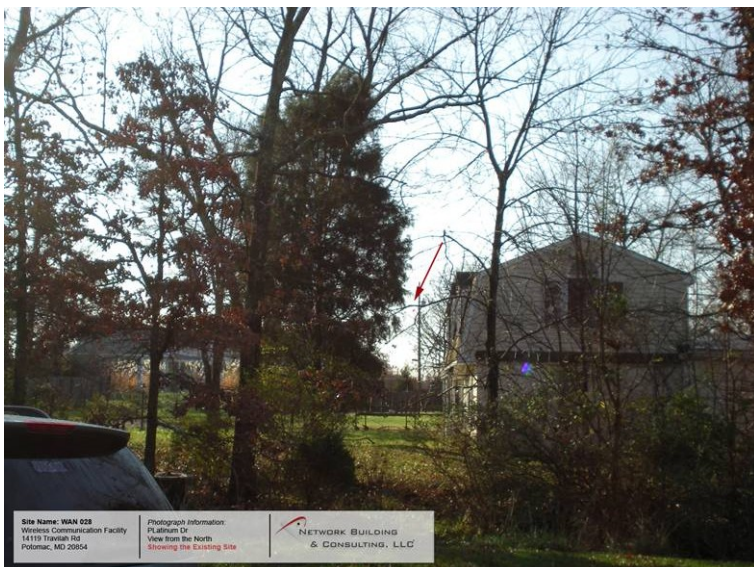
accident resulting in any chemical release. According to T-Mobile's statement, the chemicals contained in the T-Mobile radio base station cabinets do not pose any threat to the general public or the environment throughout an extreme range of operating conditions.

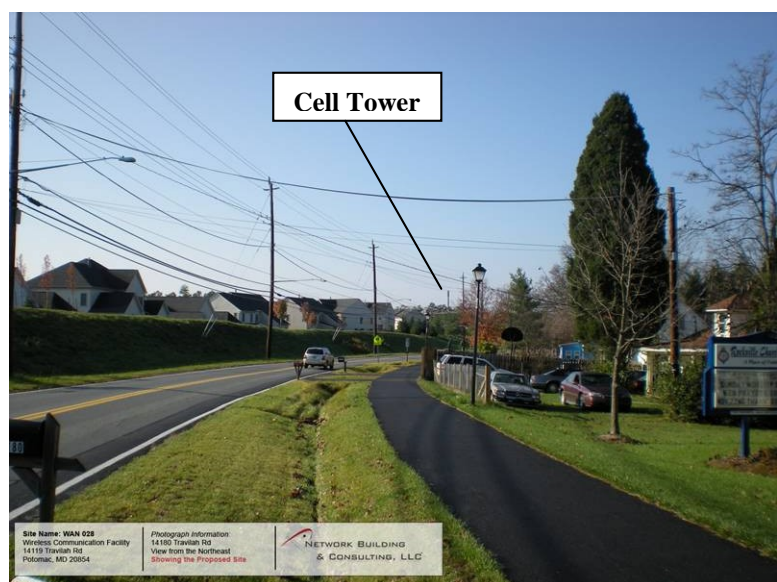
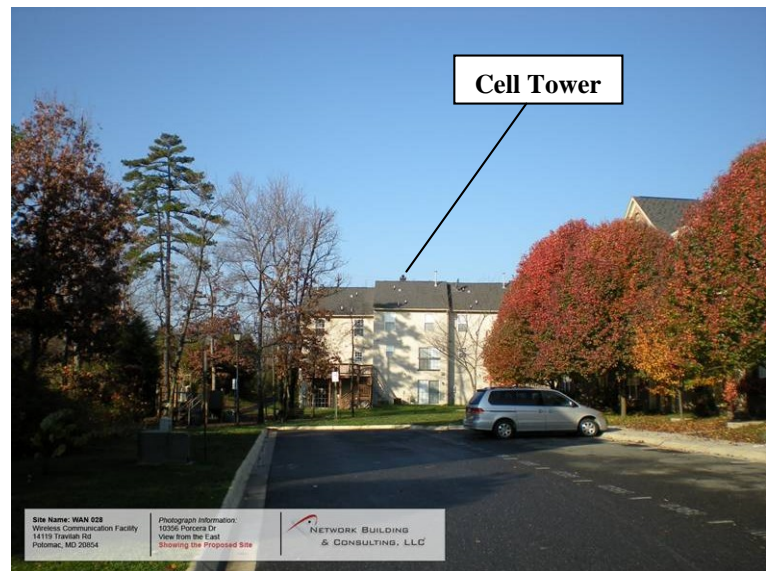
C. Impact of the Proposed Facility on the Neighborhood

The most significant issue regarding a telecommunications facility near a residential zone is its potential visual impact upon the neighbors. For the reasons explained below, the Hearing Examiner finds that the proposed monopole will not be a visual nuisance to the neighborhood.

Michael Bortz, a zoning project manager and agent for T-Mobile, testified that, as is typical practice when T-Mobile sites a proposed cell tower, they flew a red balloon at the proposed height and took pictures from different vantage points. Then by imagery through computer modeling, they simulated what the pole would look like from the approximate locations specified on a location map (Exhibit 11(a)). Mr. Bortz identified the photo simulations in Exhibits 11(b) through (m). These are the photo simulations that were submitted with the application. The location map shows the different locations that match up to the photos. Mr. Bortz testified that these photos accurately depict the scene as it would exist were the tower erected at that site. Tr. 31-33.

The red star in the center of the map shows the location of the proposed monopole based on its coordinates. The various blue dots show the points where the pictures were taken, looking towards the site, and over the blue dots, in red, it shows how far that point is from the site. The following photographs on the left depict the site as it exists, viewed from the locations indicated on the photographs, and the photographs on the right depict the site as one would see it with the proposed monopole erected. They all illustrate the same thing, that while the pole would not be invisible in some locations, there is very little real change to the view because of the trees and because of the relatively low height of the pole.





In the next two photos, the tower will not be visible, so only one photo is shown for each location:



Technical Staff made the following comments regarding visibility of the proposed monopole (Exhibit 22(a), p. 9):

The proposed special exception minimizes any potential concerns as the 80-foot wooden monopole conforms better to what is already in the neighborhood with wooden power poles. The proposal is shorter in height than a typical monopole, which are typically greater than 100 feet. The monopole is located towards the rear of the property approximately 385 feet from the nearest road and the residences are located on the other side of the road.

Staff also noted that the proposed monopole will not have other adverse effects on the community (Exhibit 22(a), p. 9):

As noted, the proposed facility will be unmanned and therefore, there are no significant transportation impacts that would result from the proposed special exception. There are no discernible noise related impacts associated with the proposed use. The size, scale and scope of the proposed use are not likely to result in any traffic disruption, light intrusion or any other environmental impact. There are no non-inherent adverse effects sufficient to justify a denial of the requested special exception.

Finally, T-Mobile asserts in its Statement in Support of this application (Exhibit 27(a), p. 1), that “T-Mobile holds a license issued to it by the Federal Communications Commission (“FCC”) to provide personal communication service (“PCS”) throughout the greater Baltimore-Washington, DC metropolitan areas, including all portions and sections of Montgomery County, MD.” Petitioners’ radio frequency (RF) expert, Curtis Jews, testified that if this site is approved, T-Mobile commits to complying with FCC rules and its license regarding radio frequency emissions. Tr. 57.

The FCC regulates radio frequency exposure issues on a Federal level, and local officials are prohibited from deciding, based on health concerns, that a facility is inappropriate, as long as it complies with FCC regulations. Section 704(B) of the Telecommunications Act of 1996, 47 USC §332(c)(7)(B)(iv), provides, *inter alia*, that

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.

The Hearing examiner finds, based on the uncontroverted evidence, that the proposed use, though it will be visible from some vantage points, will have no non-inherent adverse effects on the surrounding community.

D. The Master Plan

Petitioners' property is located in the area subject to the 2002 Potomac Subregion Master Plan. The Potomac Subregion Master Plan focuses on respect for environment, but recognizes the need to build communities and resources that will serve existing and future generations of residents (Plan p. 1). With regard to special exceptions, the Plan highlights indicate that the Plan seeks to avoid an excessive concentration of special exceptions along major transportation corridors. (Plan p. 2).

The Master Plan provides the following guidance for special exception uses, including telecommunications facilities (Special Exception Policy, Plan pp. 35-36):

This Plan endorses guidelines for locating special exception uses in residential areas and recommends a re-examination of the approval process for telecommunication facilities; particularly monopoles. ... The Master Plan seeks to provide guidelines that will protect residential areas while also attempting to meet important policy goals.

Recommendations:

- *Limit the impacts of existing special exceptions in established neighborhoods. Increase the scrutiny in reviewing special exception applications for highly visible sites and properties adjacent to the Chesapeake & Ohio Canal National Historical Park.*
- *Avoid an excessive concentration of special exceptions along major transportation corridors.*

Sites along these corridors are more vulnerable to over-concentration because they have high visibility. Uses that might diminish safety or reduce capacity of roadway with too many access points or conflicting turn movements should be discouraged.

In the design and review of special exception uses, the following guidelines should be followed in addition to those stated for special exception uses in the Zoning Ordinance:

- a. Adhere to Zoning Ordinance requirements to examine compatibility with the architecture of the adjoining neighborhood...*
- b. Parking should be located and landscaped to minimize commercial appearance...*

- c. *Efforts should be made to enhance or augment screening and buffering as viewed from abutting residential areas and major roadways.*

* * *

Technical Staff made the following observation about the subject petition, with regard to the Master Plan (Exhibit 22(a), p. 4):

Although there are other special exceptions in the vicinity of the proposal, this particular additional special exception does not create an excessive concentration of special exceptions as the use will not add any trips to roadways and will not reduce the capacity of roadways. The proposal will be an unmanned telecommunications facility, which will not require parking. The property already has screening on the site by way of fencing and trees along the property line.

Staff concluded (Exhibit 22(a), p. 4): “This proposal does not conflict with the guidance in the master plan.”

The Hearing Examiner agrees that the subject proposal will not offend the Master Plan guidelines. The proposed cell tower will serve an important public purpose, as will be discussed in the next section, and the visual impact of the proposed cell tower will be mitigated by its proximity to an industrial quarry, the limited height of the monopole, the fact that it will be made of wood, and the screening provided by existing trees and the planned seven-foot privacy fence. The property is zoned C-1, and Zoning Code §59-C-4.2(c) permits telecommunications facilities by special exception in the C-1 Zone.

Based on this record, the Hearing Examiner concludes that the planned use is not inconsistent with the goals and objectives of the *Potomac Subregion Master Plan*.

E. Need for the Proposed Facility

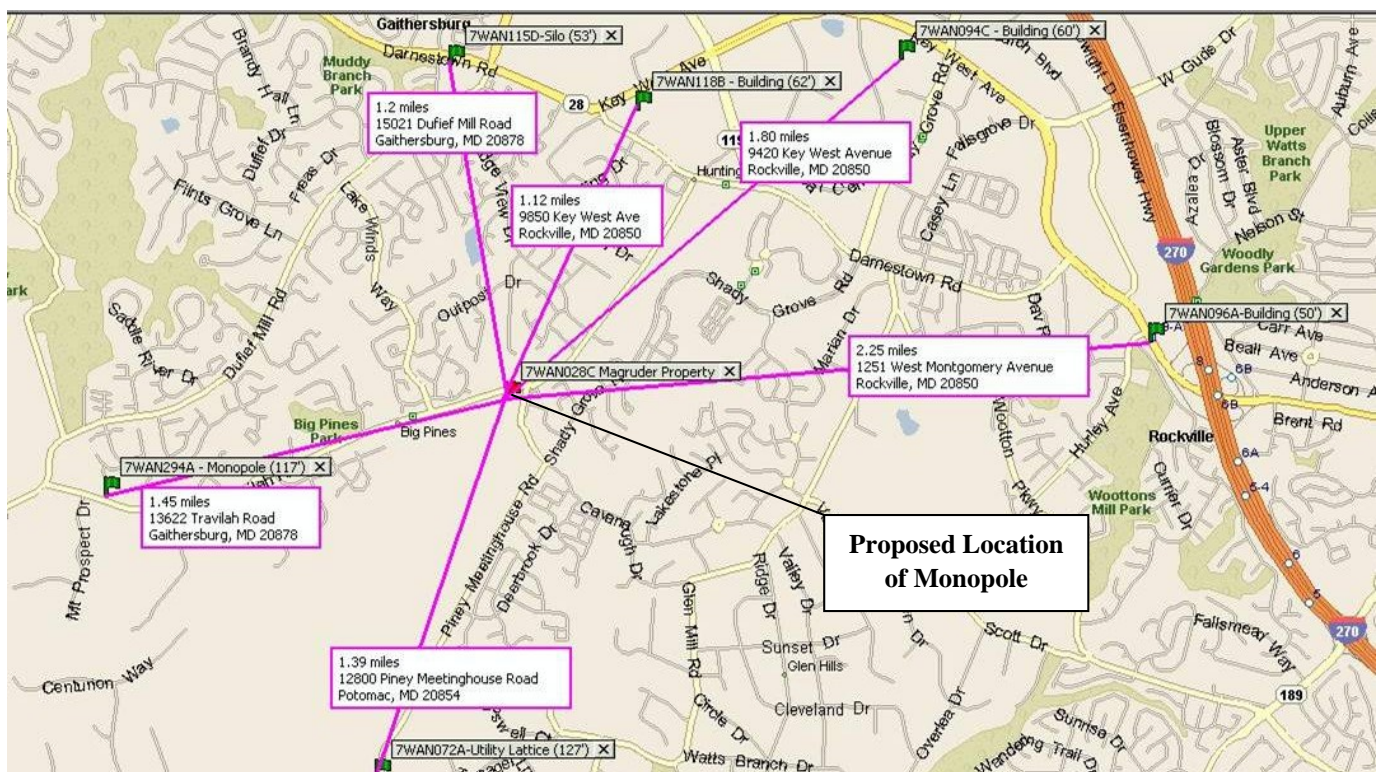
T-Mobile is proposing to locate a new telecommunications facility in order to fulfill its service requirements in this area. The Montgomery County Transmission Facility Coordinating Group (TFCG), after reviewing the revised application, determined that the applicants have a

justified need for a new site at the proposed height of 80 feet and that there are not any existing structures in the vicinity that would meet T-Mobile's service need in the area. Exhibit 7. It thus recommended approval.

Even though this petition has been recommended by both the Transmission Facilities Coordinating Group and the Technical Staff, the Board of Appeals "must make a separate, independent finding as to need and location of the facility." Zoning Ordinance §59-G-2.58 (a)(12).

Petitioners presented evidence at the hearing as to both the need for, and the proper location of, the proposed telecommunications facility. That testimony came from T-Mobile's agent, Michael Bortz (Tr. 33-35), and from a T-Mobile radio frequency (RF) engineer, Curtis Jews. Tr. 51-58.

Mr. Bortz also identified a map (Exhibit 38) showing the proposed site, labeled 7 WAN 028C Magruder Property, and distances to nearest T-Mobile cell towers. He testified that the goal here is to have this site somewhat in the middle to help off load capacity and help with coverage in the area. Tr. 33-35. Exhibit 38 is reproduced below:



Curtis Jews, the RF lead engineer for T-Mobile, testified as an expert in Radio Frequency (RF) Engineering. Mr. Jews testified that the subject site is needed for a cell tower to improve current cell coverage in the area. T-Mobile's coverage goal is to provide improved in-building coverage and to provide coverage that will allow customers to have a call that is not interrupted by a dropped call. Tr. 53-56.

Mr. Jews also introduced two coverage maps, Exhibit 42(a) showing current on-air coverage around the site and 42(b), showing current on-air coverage with the proposed cell tower, WAN-028C, activated. Green is in-building coverage, which is the coverage that one can expect inside of the home. Blue is in-vehicle coverage, and the yellow is the on-street coverage. Tr. 53-56. As is apparent from Exhibit 42(a), reproduced below, there is currently a lack of in-building coverage in the area of the proposed cell tower:

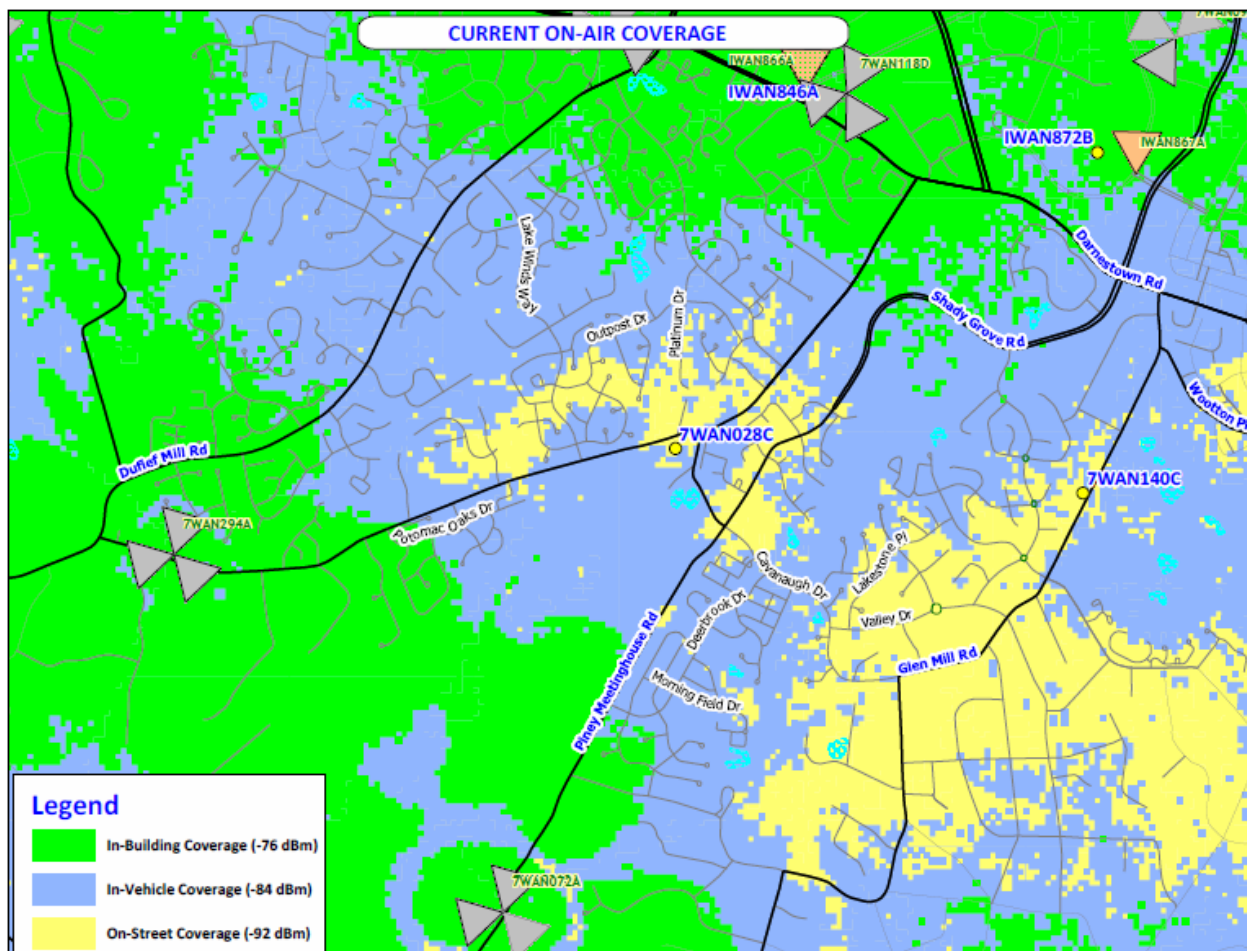
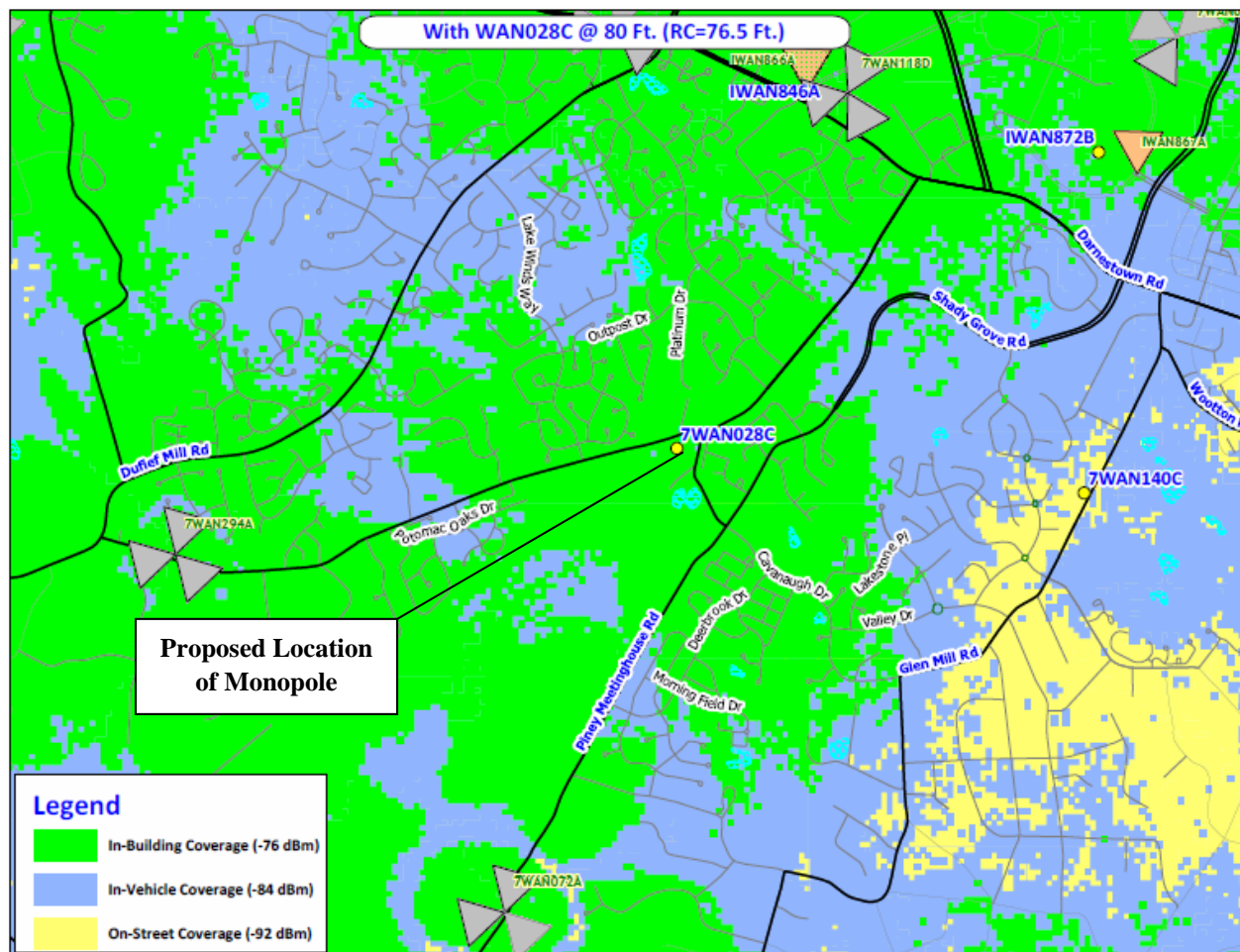


Exhibit 42(b), reproduced below, demonstrates the expected improvement in coverage with the new cell tower (WAN 028C) on air. Where there was a lot of yellow, which is on street coverage, and blue, which is in vehicle, there now is in-building coverage, which is green, and more of the blue in-vehicle coverage. Thus, the new facility would fill in the gap. Tr. 53-56.



According to Mr. Jews, there are typically approximately 290,000 calls made from wireless homes to 9-1-1 across the country, and T-Mobile had a little over 17,000 9-1-1 calls. Tr. 56-57.

As recited in the Tower Committee's report (Exhibit 7), Petitioners attempted to find suitable existing structures on which to mount their antennae, but there are no existing structures in the vicinity that would meet T-Mobile's service need in the area. The Tower Coordinator stated, "Based on our review . . . we agree with T-Mobile's conclusions about those alternatives." Exhibit 7, p. 3.

There is no evidence in the record to contradict the testimony of Ms. Bortz and Mr. Jews, and the Hearing Examiner therefore credits their testimony. Based on that testimony and on the recommendation of the Transmission Facilities Coordinating Group and the Technical Staff, the Hearing Examiner finds that there is a need for proposed telecommunications facility, and that it is appropriately located.

III. SUMMARY OF HEARING

At the hearing, Petitioners called two witnesses, Michael Bortz,, a zoning project manager and agent for T-Mobile, and Curtis Jews, a radio frequency engineer.

At the beginning of the hearing, the Hearing Examiner asked Petitioner to file an amended Statement in Support of the Application to show the correct name of the co-Applicant and the height of the proposed cell tower. Tr. 5-6.

Since the plans were also amended at the hearing, the record had to be held open until May 31, 2011, to allow 15 days for public comment pursuant to Board rules. Petitioner agreed that the FCC “shot-clock” would not run during that period of time. Tr. 58-61.

1. Michael Bortz (Tr. 7-50):

Michael Bortz, testified that he is a zoning project manager and agent for T-Mobile. He has been working in the industry for 2 years and is familiar with the site and the plans in this case.

Mr. Bortz introduced revised plans (Exhibits 29 and 30), which corrected the indicated Zone from C-4 to C-1. He also described the subject site and Petitioner's proposal.

Access to the site is off of Travilah Road through a paved driveway. This parcel is all paved, and a driveway leads back to the proposed facility. An 80 foot monopole, wooden type monopole structure is being proposed.

The compound is a 20 by 30 fenced compound. It will be fenced by a 7 foot chain link,

and that will have privacy slats in it so you can't see into the equipment. It'll be screen for 100 percent opacity from the outside.

T-mobile is proposing a 10 by 20 concrete pad for the equipment cabinets. The wood pole will also be inside the proposed 20 by 30 compound. It is an 80 foot wood pole. The antennas will be flush mounted to the pole itself, and there is room inside that proposed 20 by 30 compound for two additional carriers if they so choose to co-locate on this pole. There is enough space for other carriers, although some require much larger ground footprints than others. Tr. 14.

The property line setbacks are shown as 385 feet to the north, 21 feet to the south, 73 to the east, and 111 to the west. Mr. Bortz identified an aerial photo of the site as Exhibit 32, with the proposed site location the southernmost portion of that parcel on a gravel area.

There is a 98 acre quarry to the south. Between the quarry parcel and site parcel there are heavily wooded mature trees currently screening the site from the southwest and from the east. The proposed pole would be greater than 300 feet from any off site residence. Tr. 18-19. It's 385 feet to Travilah Road, and around 470 feet to the off site dwelling to the north. The off-site dwelling which adjoins the Barton Quarry parcel is over 700 feet to the west. The closest townhomes to the east of the proposed site are 370 feet away, as shown in Exhibit 33, a Google photo. Those townhomes are the closest residences to the proposed cell tower. Tr. 20-21. [Petitioner's counsel suggested that the Tower Committee meant to question the distance to the townhouses on the east, but the Committee referred to then as on the west.] The closest residence to the west is a house 723 feet away, as shown in Exhibit 34. The closest dwelling to the north of the proposed site is 472 feet. away, as shown in Exhibit 35. Tr. 22-25. There are no residences on the large Barton quarry parcel to the south.

Zones around the site include I-2 and R-200/TDR. [The Hearing Examiner pointed out that immediately to the east is C-1] There is only a 21 foot setback to the I-2 Zone to the south, so

Petitioner will need a 19 foot waiver. According to Mr. Bortz, by placing the proposed facility to the far south end of this parcel, it will be farther away from Travilah Road and any view from the surrounding northern residential houses. There is a lot of existing vegetation surrounding this parcel. The 21 foot setback is abutting a quarry, which is heavy industrial. The Tower Committee did recommend its approval and Staff has recommended the approval. The equipment itself is being screened by a seven foot fence with opaque privacy slats. Tr. 26-27.

The cell tower will be a wood pole. Typical telephone poles are in the neighborhood of about 50 feet. This pole certainly would be a little bit taller and perhaps a little bit thicker, but the same type of color and design, as shown in Exhibit 37. The required azimuths of the antenna may take some tilt in the pole, but it's still considered flush mounted because it's actually mounted directly to the wooden pole, even though they stand away, at least a couple of inches from the wood pole. Tr. 28-30.

Mr. Bortz identified the photo simulations in Exhibits 11(b) through (m). Exhibit 11(a) is a location map. These are the photo simulations that were submitted with the application. As is typical practice, they were created by the flying of a red balloon to measure the height, taking pictures from different vantage points and then simulating by imagery through computers modeling to show what the pole would look like from these approximate locations. The location map shows the different locations that match up to the photos. Mr. Bortz testified that these photos accurately depict the scene as it would exist were the tower erected at that site. Tr. 31-33.

Mr. Bortz also identified a map (Exhibit 38) showing the proposed site, labeled 7 WAN 028C Magruder, and distances to nearest T-Mobile cell towers. The goal here is to have this site somewhat in the middle to help off load capacity and help with coverage in the area. Tr. 33-35.

Mr. Bortz testified that the Montgomery County Tower Committee reviewed and approved the application.

[Sean Hughes, counsel for T-Mobile, adopted the Technical Staff report as part of T-Mobile's testimony and agreed to Staff's recommended conditions and to the conditions the Hearing Examiner usually recommends in cell tower cases. Tr. 37-38.]

In Mr. Bortz's opinion, the cell tower will be in harmony with the neighborhood. It will be an unmanned facility, requiring about one visit per month by a technician, if needed. There will be minimal traffic. It will not cause any objectionable noise by raising fumes, odors, dust, illumination glare, physical activity to the site. There will be no lights on the tower. There will be a light at the base of the pole to be turned on only in emergencies when a night visit is required. Exhibit 39 is a memo regarding FAA requirements for lights.

Mr. Bortz further opined that this passive unmanned, unlit facility will not have any negative impact on the health, safety and welfare of people in and around this area. It will provide cell service to the surrounding community and anybody driving along the roads adjacent to this facility and surrounding this facility. As to health and safety concerns, it will improve access to 911 calls. It will not require any material use of public services and facilities such as water or sewer.

Mr. Bortz introduced an affidavit from William O'Brien, a T-Mobile real estate manager, and attachments, regarding battery safety. Exhibit 40. Mr. O'Brien certified that T-Mobile will submit an application for a Montgomery County high use facility registration for the proposed wireless broadband communications facility pursuant to county code rules.

Mr. Bortz noted that the proposed tower is low for this type of structure, and it's not a metal monopole which is fairly standard. A wooden monopole blends in with the surroundings. The fence around it will not be screened with vegetation because the facility is used for commercial use right now, and is gravel paved. There are also other commercial uses on the property. Any landscaping would take away from those other commercial entities. There also is significant existing vegetation surrounding the site itself. Look back, from north to south, there are existing

buildings on the structure that block a lot of the ground compound. Tr. 45-47.

Mr. Bortz noted that the property owner is a co-applicant with T-Mobile of this application, and T-Mobile is leasing the property from Travillah LLC WHM. Tr. 48.

Mr. Bortz testified that T-Mobile would commit that if it this was approved and built, that they would remove the facility if it was no longer being utilized by any carrier for 12 months, and will comply with the sign requirements. There will be no outdoor storage of equipment other than what's being utilized there and T-Mobile will maintain the facility in a safe condition. The application was filed within 90 days of the Tower Committee recommendation. Tr. 49-50.

2. Curtis Jews (Tr. 51-58):

Curtis Jews testified as an expert in Radio Frequency (RF) Engineering for T-Mobile. Mr. Jews is the RF lead engineer for T-Mobile. He worked on this site for T-Mobile. Mr. Jews testified that the subject site is needed for a cell tower to improve current cell coverage in the area. T-Mobile's coverage goal is to provide improved in-building coverage and to provide coverage that will allow customers to have a call that is not interrupted by a dropped call. Tr. 53-56.

Mr. Jews also introduced two coverage maps, Exhibit 42(a) showing current on-air coverage around the site and 42(b), showing current on-air coverage with the proposed cell tower, WAN-028C, activated. Green is in-building coverage, which is the coverage that one can expect inside of the home. Blue is in-vehicle coverage, and the yellow is the on-street coverage. Tr. 53-56.

At the subject site, there is currently a lack of in-building coverage. Exhibit 42(b), showing the expected coverage with the new cell tower on air, demonstrates there is an improvement in coverage. Where there was a lot of yellow, which is on street coverage, and blue, which is in vehicle, there now is in-building coverage, which is green, and more of the blue in-vehicle coverage. Thus, the new facility would fill in the gap. Tr. 53-56.

According to Mr. Jews, there are typically approximately 290,000 calls made from wireless

homes to 9-1-1 across the country, and T-Mobile had a little over 17,000 9-1-1 calls. Tr. 56-57.

Mr. Jews further testified that T-Mobile commits to complying with FCC emissions guidelines. Tr. 57. The Hearing Examiner asked Petitioner's counsel to submit a copy of their compliance report, which he later did in Exhibit 45. Tr. 58.

IV. FINDINGS AND CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 22(a)).

Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale

of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a telecommunications facility. Characteristics of the proposed telecommunications facility that are consistent with the “necessarily associated” characteristics of telecommunications facilities will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with telecommunications facilities, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff listed the following inherent physical and operational characteristics necessarily associated with a telecommunications facility use (Exhibit 22(a), p. 9):

- (1) the height;
- (2) visual impact;
- (3) design of the structure; and
- (4) an equipment compound.

The Hearing Examiner would list the following inherent physical and operational characteristics necessarily associated with a telecommunications facility use:

- (1) antennas installed on or within a support structure with a significant height;
- (2) a technical equipment area that may or may not be enclosed within a fence;
- (3) visual impacts associated with the height of the support structure;
- (4) radio frequency emissions;

- (5) a very small number of vehicular trips per month for maintenance; and
- (6) some form of back-up power.

The inherent effects of a typical monopole telecommunications facility would generally have only a visual impact on the neighborhood, since it would be noiseless, unmanned and require only occasional servicing. That is the case here, except that even the visual impact is small in this instance because the telecommunications facility will be set back far from the nearest dwelling; it will be sited next to a quarry in an industrial zone; it will be made of wood; it will be relatively short for a cell tower; and it will be adequately buffered by trees and a fence. There are no unusual, negative characteristics of the site.

For all the reasons discussed in Part II of this report, and considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there are no non-inherent adverse effects from the proposed use which would require denial of the petition.

B. General Conditions

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The Technical Staff report, the approval of the Transmission Facilities Coordinating Group, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

Sec. 59-G-1.21. General conditions.

§5-G-1.21(a) *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

- (1) Is a permissible special exception in the zone.*

Conclusion: A telecommunications facility is a permissible special exception in the C-1 Zone, pursuant to Code § 59-C-4.2(c).

- (2) *Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.58 for a telecommunications facility as outlined in Part C, below.

- (3) *Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: Petitioners' property is located in the area subject to the 2002 Potomac Subregion Master Plan. For the reasons set forth in Part II.D. of this report, the Hearing Examiner finds that the planned use is not inconsistent with the goals and objectives of the 2002 Potomac Subregion Master Plan.

- (4) *Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

Conclusion: The proposed installation will be in harmony with the character of the neighborhood because it will be sited in a commercial zone, with a large quarry to its south, which is in an industrial zone; it will be relatively inconspicuous to most of the adjacent residential community due to the large setbacks and surrounding

trees; and it will be low in height and constructed of wood. There will also be no significant impact on traffic or parking. The proposed use is a low intensity use, only requiring on-site personnel for emergency repairs and regularly scheduled maintenance visits once or twice a month. Technical Staff report (Ex. 22(a), p. 3).

Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: Technical Staff found the telecommunications facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. The Hearing Examiner agrees for all the reasons stated immediately above, and those discussed in Part II.C. of this report.

Therefore, the Hearing Examiner finds that the telecommunications facility will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The tower will have no lights, and the equipment building will not be illuminated at night except when night-time servicing is required. Technical Staff found that the special exception would cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. Exhibit 22(a), p. 11.

Thus, the undisputed evidence supports the conclusion that the telecommunications facility will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity, and the Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: The proposed special exception use will not change the intensity of special exception uses in any substantial way. As stated by Technical Staff, although the site is in the vicinity of two other special exceptions, this proposal will not produce vehicular traffic, and it will not affect the area adversely, or alter the predominantly residential nature of the area. Exhibit 22(a), p. 11. Moreover, the proposed use is consistent with the 2002 Potomac Subregion Master Plan. The Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses in a way that will affect the area adversely.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site. Moreover, the federal Telecommunications Act of 1996, 47 USC §332(c)(7)(B)(iv), provides that:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service

facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the [Federal Communications] Commission's regulations concerning such emissions.

Petitioners' radio frequency (RF) expert, Curtis Jews, testified that if this site is approved, T-Mobile commits to complying with FCC rules and its license regarding radio frequency emissions. Tr. 57. Petitioners will also be required to comply with all applicable hazmat regulations governing the site. The Hearing Examiner therefore concludes that the proposed telecommunications facility will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area. In fact, it will improve access to 911 calls.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: The evidence supports the conclusion that the proposed special exception would be adequately served by the specified public services and facilities, to the extent they are needed for this type of use.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:*
- (i) does not require approval of a new preliminary plan of subdivision; and*
 - (ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*
- then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: According to Technical Staff, the special exception sought in this case would not require approval of a preliminary plan of subdivision. Exhibit 22(a), pp. 5-6.

Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). Technical Staff did do such a review, and concluded that the proposed use would add no additional trips during the peak-hour weekday periods and only one or two service trips per month. Thus, the requirements of the LATR and PAMR are satisfied without a traffic study. By its nature, the site requires no school, water or sewer services. Technical Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards. Exhibit 22(a), pp. 5 and 12.

(C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Transportation Staff's conclusion that the proposed use "will have no adverse effect on area roadway conditions," the Hearing Examiner so finds. Exhibit 22(a), p. 5.

C. Specific Standards

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 22(a)) and the conclusion of the Transmission Facilities Coordinating Group (Exhibit 7), provide sufficient evidence that the specific standards required by Section 59-G-2.58 are satisfied in this case, as described below.

Sec. 59-G-2.58. Telecommunication facility

(a) Any telecommunication facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

A. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.

B. In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

C. The setback from a property line is measured from the base of the support structure to the perimeter property line.

D. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

Conclusion: The proposed cell tower will be in a commercial zone. Section 59-G-2.58(a)(1)(B)

requires, in commercial and industrial zones, that the cell tower be set back

a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.

The property line setbacks in this case are 385 feet to the north (a residential zone), 21 feet to the south (an industrial zone), 73 to the east (a commercial zone), and 111 to the west (an industrial zone in the southern third of the property line and a residential zone in the northern portion). It thus meets all of the setback requirements, except to the south, where the setback should be 40 feet (half the height of the tower).

Applicants are seeking a 19 foot reduction of the setback requirements on the south, pursuant to Section 59-G-2.58(a)(1)(D), to allow the cell tower to be erected 21 feet

from the southern property line, instead of the required 40 feet. As explained by Applicants, the cell tower was not sited to meet the southern setback requirements to get it closer to the industrial quarry and further away from Travilah Road and any view from the surrounding northern residential houses. It will also be well screened by trees in the planned location. Tr. 25-26.

The Board of Appeals is authorized by Zoning Ordinance §59- G-2.58(a)(1)(D) to reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction; and “evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.” The rear setback for a building in the C-1 Zone⁵ is determined by Zoning Ordinance §59-C-4.343, which requires in the circumstances of this case, that “the setback must be not less than that required in the adjoining zone.” The adjoining zone to the south is the I-2 Zone. It does not require a setback, pursuant to § 59-C-5.33(b)(2), because the adjoining subject site is in a commercial zone. Thus, the Board is authorized to grant the waiver sought by Applicants.

Technical Staff agreed with the waiver request (Exhibit 22(a), p. 13):

The proposed location takes advantage of the quarry location to the south. The nearest residences are on the north side of Travilah Road and the proposed location is the most remote feasible. The visual impact to is minimal and will ultimately be further reduced by redevelopment of the commercial property. Staff supports the setback reduction request.

⁵ The overall site plan (Exhibit 29(c)) erroneously refers to setbacks for the C-4 Zone, which was the site’s classification prior to its recent rezoning. Petitioners indicated that they had made corrections to the plans to reflect the rezoning. Tr. 11-12. Nevertheless, the erroneous reference to the C-4 Zone has no impact here because the actual setbacks meet all the C-1 Zone’s requirements.

The Hearing Examiner also agrees with this sensible observation, and there is no evidence to the contrary in the record.

Based on this record, the Hearing Examiner recommends that the Board of Appeals grant the requested reduction in the southern setback to 21 feet.

(2) *A support structure must be set back from any off-site dwelling as follows:*

- A. *In agricultural and residential zones, a distance of 300 feet.*
- B. *In all other zones, one foot for every foot in height.*
- C. *The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.*

D. *The Board of Appeals may reduce the setback requirement in the agricultural an[sic] residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.*

Conclusion: In addition to the required setbacks from the property lines, Zoning Ordinance §59-G-2.58(a)(2)(B) requires, in zones other than a residential or agricultural zone, that the cell tower be set back from any off-site dwelling one foot for every foot in the height of the tower (*i.e.*, 80 feet in this case). This tower will be set back 347 feet from the nearest residence, thus meeting even the 300 foot setback required by §59-G-2.58(a)(2)(A) for residential or agricultural zones. Thus, the proposal is in compliance with this requirement.

(3) *The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection, pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure, as authorized in the building permit.*

Conclusion: The support structure will be 80 feet in height. Thus, the proposal meets the requirement of being under 155 feet. A condition has been proposed in Part V of this report to ensure compliance with the certification requirement.

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height.

Conclusion: As discussed in Part II.C of this report, the proposal conforms to this requirement. In addition to the nearby trees, the compound will be surrounded by a 7 foot tall, chain link fence with privacy slats.

(5) The property owner must be an applicant for the special exception for each support structure. A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. A support structure must be constructed to hold no less than 3 telecommunications carriers. The Board may approve a support structure holding less than 3 telecommunications carriers if:

(A) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and

(B) the Board decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunications facility for all the carriers.

Conclusion: The property owner, Travillah-WHM Limited Partnership, is a co-petitioner. The facility will be capable of supporting three telecommunications carriers, according to Petitioners' revised Statement. Exhibit 27, p. 8.

(6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

Conclusion: No signs or illumination are proposed, except the two square foot sign required by subsection (8), below, and a light on the equipment shelter to be used if emergency repairs are required at night.

(7) Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months.

Conclusion: A condition requiring removal by Petitioners if the facility is not used for more than one year is recommended in Part V of this report.

(8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.

Conclusion: The required sign will be installed (Petitioners' revised Statement. Exhibit 27, p. 9), and a condition so stating is recommended in Part V of this report.

(9) Outdoor storage of equipment or other items is prohibited.

Conclusion: No outdoor storage of equipment is proposed. Equipment will be enclosed as described elsewhere in this report.

(10) Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility, in a safe condition.

Conclusion: A condition requiring that Petitioners maintain the facility in a safe condition is recommended in Part V below.

(11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must

be no more than 90 days old, except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance. The recommendation of the Transmission Facility Coordinating Group must be submitted to the Board at least 5 days before the date set for the public hearing.

Conclusion: A TFCG recommendation of approval, dated February 3, 2010, was filed herein as Exhibit 7. It was less than one year old when the petition was filed on February 1, 2011.

(12) The Board must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility.

Conclusion: As noted, both the Transmission Facility Coordinating Group and the Technical Staff recommended approval. The Hearing Examiner recommends that the Board make the finding that there is a need for the proposed telecommunications facility and that it will be appropriately located, based on the evidence set forth in Part II of this report.

(b) Any telecommunications facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

Conclusion: Not applicable.

(c) Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use.

Conclusion: Not applicable.

D. Additional Applicable Standards

Section 59-G-1.23. General development standards.

(a) Development Standards. Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

Conclusion: This petition falls under the exception because Zoning Ordinance §59-G-2.58 specifies the development standards for telecommunications facilities. As discussed above, the proposed use meets those standards.

(b) Parking requirements. Special exceptions are subject to all relevant requirements of Article 59-E.

Conclusion: Technical Staff did not recommend any parking for the proposed facility because it will require only one or two service visits per month.

(c) Minimum frontage. In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

* * *

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.

Conclusion: No waiver is needed because the subject site is located in the C-1 Zone, which has no minimum frontage requirement. In any event, the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of Section 59-G-1.21.

(d) Forest conservation. If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

Conclusion: According Technical Staff, the property is exempt from submitting a forest conservation plan (Exhibit 22(a), p. 5).

(e) Water quality plan. If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and

the department find that the required revisions can be evaluated as part of the final water quality plan review.

Conclusion: This section pertains only to sites in special protection areas, where water quality plans are required. This site is not within an SPA.

(f) Signs. The display of a sign must comply with Article 59-F.

Conclusion: As indicated earlier in this report, the only sign on the facility will be the two square foot sign required by the special exception.

(g) Building compatibility in residential zones. Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

Conclusion: Inapplicable. The subject site is in a commercial zone, not a residential zone.

(h) Lighting in residential zones. All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

Conclusion: Inapplicable. The subject site is in a commercial zone, not a residential zone.

Based on the testimony and evidence of record, I conclude that the telecommunications facility use proposed by Petitioners, as conditioned below, meets the specific and general requirements for the special exception, and that the Petition should be granted, subject to the conditions set forth in Part V of this report.

V. RECOMMENDATION

Based on the foregoing analysis, I recommend that Petition No. S-2803 for a special exception to construct and operate a telecommunications facility, including an 80-foot tall monopole, and related equipment, at 14119 Travilah Road, Potomac, Maryland, be GRANTED, and pursuant to Section 59-G-2.58(a)(1)(D), that the Board of Appeals should grant Applicants' request to reduce the required setback from the southern property line from 40 feet to 21 feet, all with the following conditions:

1. The Petitioners shall be bound by all of the exhibits of record, and by the testimony of their witnesses and the representations of counsel identified in this report.
2. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the Petitioners must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit.
3. The telecommunication facility must display a contact information sign, no larger than two square feet, affixed to the outside of the equipment enclosure. This sign must identify the owner and the maintenance service provider and provide the telephone number of a person to contact regarding the installation. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
4. There must be no antenna lights or stroboscopic lights unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.
5. There must be no outdoor storage of equipment, except equipment specified in the Site Plan.
6. Each owner of the telecommunications facility is responsible for maintaining the facility in a safe condition.

7. The facility shall be available for co-location of up to three carriers.
8. The telecommunications facility must be removed at the cost of the owner of the telecommunications facility when the facility is no longer in use by any telecommunications carrier for more than 12 months.
9. Petitioners must obtain a Hazmat Use Permit for the subject site before commencing operations.
10. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and the entire premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 30, 2011

Respectfully submitted,



Martin L. Grossman
Hearing Examiner